



# Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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## LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

*This report contains descriptions and/or excerpts of relevant bills that passed the first chamber, passed the second chamber, or were enacted during the specific periods. In addition, a recap of significant legislative and judicial activity impacting the workers compensation system will be included in the first report published each month. This report is issued on a weekly basis throughout the legislative season, and it provides updates on the content of these bills if and when they progress through the legislative process. This report includes bills from states where NCCI provides ratemaking services (see state list under Contact Information) and the US Congress.*

### BILLS ENACTED

There were no relevant workers compensation-related bills enacted within the one-week period ending October 28, 2016.

### BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending October 28, 2016.

### BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending October 28, 2016.

*The following section contains monthly updates on significant legislative activity, judicial decisions, and regulatory committee activity that may impact the workers compensation system and will be included in the report the first week of every month throughout the year.*

## FEDERAL ISSUES

Issue	Update
<b>Congress</b>	Congress will remain on recess through the general election. After the election, Congress will return to session and will focus on a mechanism to fund the government for the next fiscal year. In September, Congress passed a Continuing Resolution to keep the government funded until December 9. Other agenda items for the post-election session will be dictated, in large part, by the outcome of the elections.
<b>USDOL Focus on Workers Compensation</b>	The US Department of Labor (USDOL), in coordination with the National Academy of Social Insurance (NASI), sponsored a State Workers Compensation Forum to discuss reports recently released by each respective organization. The USDOL report titled "Does the Workers Compensation System Fulfill Its Obligation to Injured Workers?" is the first report on the state-based workers compensation system in more than a decade. The NASI 2016 report titled "Workers' Compensation: Benefits, Coverage, and Costs (2014 data)" is produced annually, is a refresh of workers compensation data, and does not discuss public policy issues or proposals.

## STATE LEGISLATIVE ACTIVITY

State	Update
<b>Virginia</b>	<b>House Joint Resolution 544</b> , filed in advance of the 2017 legislative session, directs the Joint Legislative Audit and Review Commission to study the state's workers compensation system. The Commission is directed to examine certain issues, including whether claims are reviewed and processed in a timely and fair manner and to assess whether the dispute resolution process is timely, effective, and fair and equitable toward all parties.

## STATE COMMITTEE ACTIVITY

State	Update
Hawaii	The Workers' Compensation Working Group continues to discuss Disability Compensation Division process improvements, with its next meeting scheduled for November 9.
Kentucky	<p>At the October meeting of the Workers' Compensation Task Force, Reuben Jones (executive director of the Workers Compensation Funding Commission) updated the Task Force on the recent actuarial analysis of the Special Fund and Coal Workers' Pneumoconiosis (CWP) Fund. The 2017 assessment rates on workers compensation premium were adopted by the Funding Commission at its October meeting. Assessment rates for 2017 will be 6.29% for the Special Fund, which is an increase over the 2016 Special Fund rate of 5.51%. CWP assessments for 2017 will be 49.50% of premium compared to 14.82% in 2016. The severed coal assessment for 2017 will be \$0.4174 per ton of coal severed, also an increase compared to the 2016 assessment of \$0.151 per ton.</p> <p>It was noted that coal production declined from 86.5 million tons in 2013 to 23.8 million tons in 2016 and while there were only 39 CWP awards in 2013, more than 750 awards were made (and 1,664 new claims were filed) in the last 2.5 years. Dwight Lovan (commissioner of the Department of Workers' Claims) presented charts of claims-related data to the Task Force.</p>
New Hampshire	The New Hampshire Joint Committee to Study Soft Tissue Injuries Under Workers' Compensation, created by <b>SB 409</b> for purposes of workers compensation permanent impairment awards, met on October 19 and again on November 1 to finalize its report.
Oregon	Oregon's Management-Labor Advisory Committee will hold meetings on November 14. Detailed agendas are forthcoming.
Virginia	<p>On October 27, 2016, the Medical Fee Schedule Advisory Panel bi-monthly meeting was held in Richmond. The Advisory Panel continued discussions with the actuarial consulting firm Oliver Wyman. The firm must craft seven different fee schedules for six different geographic communities. The seven fee schedules are for:</p> <ul style="list-style-type: none"> <li>• Surgeons</li> <li>• Nonsurgeons</li> <li>• Type One teaching hospitals</li> <li>• Other hospitals</li> <li>• Ambulatory surgical centers</li> <li>• Outpatient centers</li> <li>• Providers of miscellaneous services</li> </ul> <p>The 42 fee schedules will be based on what doctors and hospitals received, on average, for each procedure or treatment in 2015. The next meeting is scheduled for November 10, 2016.</p>

## OTHER ITEMS OF INTEREST

State	Update
Arkansas	The Arkansas Supreme Court is scheduled to hear oral arguments on December 1, 2016, in <i>Hendrix v Alcoa, Inc.</i> , to review the trial court's dismissal of the claimant's tort suit against the employer based on exclusive remedy. The claimant is arguing that the exclusive remedy provision does not apply because she has no remedy against the employer. The Workers' Compensation Commission had ruled the employee was not eligible for workers compensation benefits because the disease did not manifest within the statutory three-year period after the last occupational exposure. The employee retired in 1995, was diagnosed with mesothelioma in 2012, and died one year later. The employee's wife filed a subsequent tort suit against the employer, which the trial court held was barred by the exclusive remedy provision.
Florida	<p>On October 24, 2016, the Division of Workers Compensation held three hearings on proposed rules to adopt the <i>Florida Workers' Compensation Reimbursement Manual</i> 2016 editions for Hospitals, Ambulatory Surgical Centers (ASCs), and Health Care Provider as approved by the Three-Member Panel in April. The reimbursement manuals for hospitals and ASCs will require legislative ratification due to an estimated overall impact on Florida's workers compensation system of +2.2% (\$80M) for hospitals and +0.6% (\$22M) for ASCs. If approved for final adoption and ratified by the legislature, the reimbursement manuals will go into effect on July 1, 2017. The reimbursement manual for health care provider (with an estimated impact of -0.1% on system costs) will also go into effect on July 1, 2017, if approved for final adoption.</p> <p>On October 31, the US Supreme Court declined to hear the appeal of <i>Stahl v. Hialeah Hospital</i> after the Florida Supreme Court ruled in April that it does not have jurisdiction in the case that challenged the constitutionality of Florida's workers compensation system as an adequate exclusive remedy for injured workers.</p>

<b>Hawaii</b>	<p>The Department of Labor and Industrial Relations has introduced a proposal allowing physicians and providers of service other than physicians to transmit treatment plans by mail or facsimile to an address or facsimile number provided by the employer. The proposal also includes several changes to the Medical Fee Schedule and the Supplemental Medical Fee Schedule for workers compensation. There will be a public hearing on the proposal on November 17.</p> <p><i>NCCI is reviewing the proposal to determine the potential cost impact of the changes.</i></p>
<b>Nevada</b>	<p>The Division of Industrial Relations (Division) will hold a hearing November 16, 2016, on proposed revisions to Rule 616C.498 to comply with statutory changes approved by the legislature in <b>SB 232</b> last year. The changes affect workers injured after January 1, 2016, whose injuries received permanent partial disability classifications. The statutory changes and proposed rule revisions permit employees whose disability ratings do not exceed 30% to collect their compensation as a lump sum. Employees whose disability ratings exceed 30% can collect a portion of their compensation in a lump sum equal to the present value of an award for a disability rating of 30%. The deadline for submitting written comments is November 14. Details are available on the Division’s website.</p>
<b>North Carolina</b>	<p>The Industrial Commission (IC) has proposed a temporary rule to address ambulatory surgical center (ASC) fees while its appeal of the Wake County Superior Court’s ruling in <i>Surgical Care Affiliates, LLC v. North Carolina Industrial Commission</i>, is pending. Although the decision invalidating the applicability of the fee schedules to ASCs has been stayed, the IC’s stated purpose for the proposed temporary rule is so that “the period of time subject to a potential retroactive invalidation of the ambulatory surgery center fee schedule provisions will be limited to April 1, 2015 to December 31, 2016, providing certainty regarding medical costs for 2017 and beyond.”</p> <p>A public hearing on the proposed temporary rule will be held on Friday, November 18, 2016, and a public comment period will run from October 19, 2016, to November 29, 2016. Details are available on the Commission’s website.</p>
<b>Oregon</b>	<p>On October 11, the Oregon Workers’ Compensation Board adopted, effective November 1, 2016, the following amendments regarding attorney fees as recommended by the Workers Compensation Advisory Council:</p> <ul style="list-style-type: none"> <li>• Increase the cap on attorney fees from settlement proceeds from \$17,500 to \$50,000</li> <li>• Eliminate fee cap on Permanent Partial Disability awards</li> <li>• Increase caps for Permanent Total Disability from \$12,500 to \$20,000 on cases decided by an administrative judge and from \$16,300 to \$30,000 for cases decided by the Workers’ Compensation Board</li> <li>• Allow consideration for services performed by legal staff when determining a “reasonable” attorney fee</li> <li>• Accelerate required payment of fees from 30 days to 14 days from the final order</li> </ul> <p><i>NCCI completed an analysis of these proposals and determined that they may increase the workers compensation system costs, but the magnitude of such an increase cannot be determined at this time.</i></p>
<b>Tennessee</b>	<p>On October 21, the Tennessee Bureau of Workers Compensation hosted a forum entitled, “Conversation on the Future of Workers’ Compensation.” The event was well-attended by policymakers, regulators, employers, insurance carriers, providers, agents, labor representatives, and attorneys. Topics included:</p> <ul style="list-style-type: none"> <li>• What should be the core objectives of a workers’ compensation system?</li> <li>• What are equitable and adequate benefits?</li> <li>• What is a reasonable cost to employers for a workers’ compensation system?</li> <li>• How broad should coverage be for employees?</li> <li>• How can Tennessee make the workers’ compensation system simpler?</li> <li>• Should states agree on the objectives of workers compensation?</li> <li>• What opportunities exist for more uniformity among states’ systems?</li> </ul>
<b>Texas</b>	<p>Both parties have recently petitioned the Texas Supreme Court to review the Texas 11th Court of Appeals’ decision in <i>Unique Staff Leasing v. Cates</i>. The appellate court held the work injury was compensable despite the fact that the injured worker was not wearing the required safety harness and both his blood and urinalysis results showed the presence of a marijuana metabolite following the work injury. It determined that the claimant was entitled to benefits because both expert and lay person testimony rebutted the presumption of intoxication by showing the employee was not in a state of intoxication when the injury occurred. The employee is appealing the waiver of attorney fees and the employer is appealing issues related to the employee’s marijuana intoxication.</p>
<b>Utah</b>	<p>In <i>Injured Workers Association of Utah v. State of Utah</i>, the Utah Supreme Court held that the statute granting the Labor Commission the full power to regulate and fix attorney fees in workers compensation cases—along with the regulation outlining the mandated claimant attorney fee schedule—are unconstitutional. Claimant attorney fees will now be negotiated between claimants and their attorneys. The high court held that such fees must be reasonable.</p> <p><i>NCCI estimates the impact of this decision will result in a first-year increase of +1.9%, which is included in the recently approved loss cost filing in the state.</i></p>
<b>Vermont</b>	<p>The Department of Labor has amended the following three rules effective November 1, 2016:</p> <ul style="list-style-type: none"> <li>• Use of Opioid Medications for Treatment of Chronic Pain—This rule establishes a rebuttable presumption</li> </ul>

	<p>allowing a workers compensation insurance carrier to deny or discontinue payment for opioid medications prescribed to treat an injured worker’s chronic pain if the prescribing provider has failed to comply with the best practices for doing so as described by the Vermont Department of Health.  <i>NCCI estimates that the rule may result in savings. The magnitude of such savings is uncertain and would depend on how effective the provisions are in reducing the payments for opioids in workers compensation cases.</i></p> <ul style="list-style-type: none"> <li>• <b>Attorney Fee Awards</b>—This rule increases the rate at which attorney fees and liens are awarded from \$145 to \$200 per hour. The rule also establishes a paralegal rate of \$75 per hour. Future hourly rate adjustments will occur in \$5 increments based on increases in the consumer price index.  <i>NCCI estimates that the rule would likely result in a negligible increase in overall workers compensation system costs in the state.</i></li> <li>• <b>Vocational Rehabilitation Fees</b>—This rule increases the rates at which vocational rehabilitation service providers are compensated. For entitlement assessments, the allowable rate is now \$95 per hour to a maximum of \$1,200. The point at which vocational rehabilitation plan development fees require employer/insurer authorization is now \$2,500 and the maximum hourly fee chargeable for vocational rehabilitation services generally is now \$95. Future hourly rate adjustments will occur in \$5 increments based on increases in the consumer price index.  <i>NCCI estimates that the rule would result in a minimal increase in overall workers compensation system costs in the state.</i></li> </ul>
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**Contact Information**

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

State	State Relations Executive	Phone Number
CT, ME, NH, RI, VT	Laura Backus Hall	802-454-1800
FL, IA	Chris Bailey	850-322-4047
AL, GA, KY, LA, MS	Cathy Booth Laura Bryan	205-655-2699 225-618-8168
AK, AZ, CO, NM, UT	Maggie Karpuk	818-707-8374
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AR, IL, KS, TX	Terri Robinson	501-333-2835
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This report is informational and is not intended to provide an interpretation of state and federal legislation.